

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

VINCENT M. VENTIMIGLIA, et al.,)	
)	
Plaintiff(s),)	
)	
vs.)	Case No. 4:07CV01759 ERW
)	
AT&T YELLOW PAGES, et al.,)	
)	
Defendant(s).)	

MEMORANDUM AND ORDER

This matter comes before the Court on Plaintiffs' Motion to Award Costs to Plaintiff [doc. #66].

Plaintiffs filed suit against Defendants on October 17, 2007, alleging numerous antitrust violations as well as breach of contract, and seeking a temporary restraining order. The Court held a hearing on Plaintiffs' motion for a temporary restraining order, which the Court denied due to Plaintiffs' failure to present evidence of irreparable harm. Defendants' subsequently filed a motion to dismiss, which this Court denied as moot in order to allow Plaintiffs to file an amended complaint. Plaintiffs filed their amended complaint, and subsequently sought leave to amend a second time. The Court permitted this second amendment, which was filed on December 20, 2007. Defendants filed a second motion to dismiss on January 4, 2008, which this Court granted. The Court dismissed all of Plaintiffs' claims with prejudice, with the exception of the breach of contract claim which was dismissed without prejudice. Plaintiffs filed a motion to alter or amend the judgment which was denied by this Court on April 23, 2008. On May 29, 2008, Plaintiffs filed a motion for costs, which the Court will address at this time.

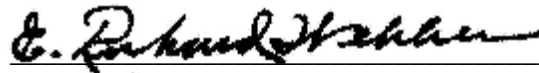
Plaintiffs assert that based on this Court's dismissal of the Plaintiffs' breach of contract action without prejudice, Plaintiffs are entitled to reimbursement of the \$350.00 filing fee.

Defendants dispute that Plaintiffs are entitled to costs, as they were not the prevailing party in the lawsuit. Federal Rule of Civil Procedure 54 provides, in pertinent part, that "[u]nless a federal statute, these rules, or a court order provides otherwise, costs—other than attorney's fees—should be allowed to the prevailing party." Fed. R. Civ. P. 54(d). Plaintiffs were not the prevailing party in this case, and therefore are not entitled to costs under the federal rules.

Accordingly,

IT IS HEREBY ORDERED that Plaintiffs' Motion to Award Costs to Plaintiffs [doc. #66] is **DENIED**.

Dated this 17th Day of June, 2008.



E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE